

# EXECUTIVE ORDER (EO) 11990: WETLANDS PROTECTION FOR CDBG-DR PROJECTS

Date of Publication: 11/18/2020



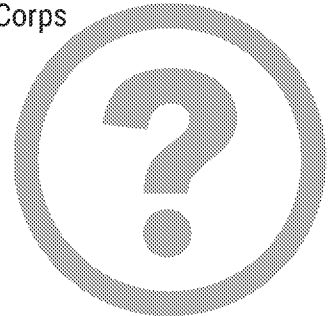
## WHAT ARE WETLANDS?

For Community Development Block Grant Disaster Recovery (CDBG-DR) assistance projects, the U.S. Department of Housing and Urban Development (HUD) defines wetlands as those areas inundated with surface or ground water frequently enough to support a prevalence of vegetative and aquatic life that require saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. HUD's definition includes wetlands separated from their natural supply of water and constructed wetlands. Please note that the U.S. Army Corps of Engineers (USACE) has a more restrictive definition of wetlands. **A USACE determination of no "jurisdictional wetland" on site is not sufficient documentation for HUD's purposes.**

## WHAT IS EXECUTIVE ORDER (EO) 11990?

EO 11990 requires HUD-funded projects to avoid adverse impacts to wetlands. This includes not supporting new construction in wetlands, to the extent practicable.

Wetlands protection under HUD regulations include all wetlands, not just those determined to be "jurisdictional" under USACE definition. Wetlands deemed jurisdictional are subject to multiple regulatory requirements under Section 404 of the Clean Water Act (CWA) in addition to 24 CFR 55 and EO 11990 requirements because USACE is responsible for regulating the discharge of dredged or fill material into waters of the United States. Non-jurisdictional wetlands must comply with 24 CFR 55 and EO 11990 regulations, but do not require coordination with USACE.



## ENVIRONMENTAL COMPLIANCE

The Environmental Review Record (ERR) should contain one of the following:

- ▶ Documentation supporting the determination an exception/allowance at 55.12(a)(3), 55.12(a)(4), 55.12(c)(3), 55.12(c)(7), or 55.12(c)(10) applies.
- ▶ Documentation supporting the determination that the project does not involve new construction (as defined in EO 11990), expansion of a building's footprint, or ground disturbance.
- ▶ A National Wetland Inventory (NWI) map or other relevant documentation supporting the determination that the project does not impact an on or off-site wetland.
- ▶ A completed 8-Step Decision Making Process, including a map and the early and final public notices, and wetland delineation report, as applicable. Note that compensatory mitigation will be required.

If jurisdictional wetlands are identified within the proposed project area and an unavoidable impact is anticipated, coordination with USACE will be necessary. Jurisdictional wetland impacts are regulated through a permit review process; nationwide permit (NWP) for minimal impacts or an individual permit (IP) for larger impacts. The ERR must contain all data associated with project specific USACE permitting.

For more information, please reach out to **Patrick Kainer** at [patrick.kainer.glo@recovery.texas.gov](mailto:patrick.kainer.glo@recovery.texas.gov) or

**Angel Peltola** at [angel.peltola.glo@recovery.texas.gov](mailto:angel.peltola.glo@recovery.texas.gov). To determine whether your proposed activity

lies within the CMP boundary, please contact the **Permit Service Center** at [permitting.assistance@glo.texas.gov](mailto:permitting.assistance@glo.texas.gov).